SINGLE BENCH

P.R. No. 1425/07
Presented by the V.K. Tekam
dated 19/2/07

(5)

CF 1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P.[C].NO. 1384/2007

PETITIONER: Mod. Farooque, S/o Abdul Rashid, Prop. New Samim Transport, Kharisia Road Ambikapur, [C.G.].

VERSUS

RESPONDENTS:
1. State Transport Appellate Tribunal, Raipur [C.G.]
2. Regional Transport Authority at Bilaspur [C.G.]
3. Sectary R.T.A. Bilaspur [C.G.]
4. Vijay Kumar Garg, S/o Tejuram Garg, Bus Operator, R/o Pathal Gaon, Distt. Jaspur, [C.G.]
5. Noore Haque, Bus Operator, R/o Kharisia Naka, Ambikapur [C.G.]
6. Giyaul Haque, Bus Operator, R/o Kharisia Naka Ambikapur [C.G.]
7. Arun Agarwal, Bus Operator, R/o Seth Basant Lal Marg Ambikapur [C.G.].

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WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(35)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (c) No. 1384 of 2007

Petitioner — Mod. Farooque, S/o Abdul Rashid, Prop. New Samim Transport, Kharisia Road, Ambikapur, (C.G.)

Versus

Respondents — State Transport Appellate Tribunal, Raipur (C.G.) and others.

Post for order 23 -4-2007

Sd/-
Satish K. Agnihotri
Judge

(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (c) No. 1384 of 2007

Petitioner — Mod. Farooque, S/o Abdul Rashid, Prop. New Samim Transport, Kharisia Road, Ambikapur, (C.G.)

Versus

Respondents

1. State Transport Appellate Tribunal, Raipur (C.G.)
2. Regional Transport Authority at Bilaspur (C.G.)
3. Secretary, R.T.A., Bilaspur (C.G.)
4. Vijay Kumar Garg, S/o Tejuram Garg, Bus Operator, R/o Pathal Gaon, Distt. Jaspur (C.G.)
5. Noore Haque, Bus Operator, R/o Kharigarh Naka, Ambikapur (C.G.)
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7. Arun Agarwal, Bus Operator, R/o Seth Basant Lal Marg, Ambikapur, (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Single Bench Hon'ble Mr. Justice **Satish K. Agnihotri**

Present: Mr. B.P. Gupta, Advocate for the petitioner.
Mr. Utkarsh Verma, Dy. Govt. Advocate for the State/respondents No. 2 and 3
Mr. Ajay Shrivastava, Advocate for the respondent No. 4.

ORDER

(Passed on this 23rd day of April, 2007)

1. By this petition, the petitioner has challenged the legality and validity of the order dated 18.1.2007 (Annexure P/6), passed by the State Transport Appellate Tribunal (hereinafter referred to as "the STAT"), Raipur in Appeal No. 73/06.

2. The indisputable facts in nutshell are that the respondent No. 4 is a private bus owner. He applied for temporary permit on the route i.e. Jashpur to Raigarh from 15.11.2006 to 14.03.2007 before the Regional Transport Authority (hereinafter referred to as "the RTA"), Bilaspur, which was rejected on 27.11.2006 (Annexure P/5).

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3. The respondent No. 4 filed an appeal, being Appeal No. 72/06, before the STAT, Raipur, wherein the STAT held that the Secretary, RTA cannot decline to reject temporary permit, keeping in view the provisions of sub-section (1) (C) and (D) of Section 87 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act, 1988"). It was further held that the secretary, Additional Secretary or Assistant Secretary is empowered under sub-section (1) (C) and (D) of Section 87 of the Act, 1988 to issue permit, but in case of grant of temporary permit under the provisions of sub-section (1) (C) and (D) of Section 87 of the Act, 1988, approval of the State Transport Authority is a necessary condition.

4. In the present case, since the temporary permit was not granted, there is no necessity to obtain approval of the State Transport Authority. The STAT found that the application filed by the respondent No. 4 was rejected on the ground that on the date of hearing, the applicant was not present and there is no document to prove that he had any intimation about the date of hearing. In view of that, keeping in view the requirement of more buses on occasion of marriages and on various festivals, the Secretary, RTA was directed to grant temporary permit w.e.f. 6.11.2006. The period of temporary permit in question has come to an end on 14.3.2007.

5. Mr. B.P. Gupta, learned counsel appearing for the petitioner would submit that the RTA has to consider the facts to the extent that the route is specified and notified, there are not more than five permits at a time, there is not any tax due, there is no case pending or there is no a clash of time. The STAT, without considering all the aspects, has directed the Secretary, RTA to grant the permit with retrospective effect.

6. Per contra, Mr. Ajay Shrivastava, learned counsel appearing for the respondent No. 4 would submit that the RTA has granted fresh permit for the period of 1.4.2007 to 30.4.2007 on the basis of the new application. The petition has become infructuous, as the time granted earlier has already come to an end.

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7. Having considered submissions made by learned counsel appearing for the parties and having perused the pleadings and documents appended thereto, it is evident that the application for temporary permit was for the period of 15.11.2006 to 14.3.2007 which has come to an end. The STAT, without having considered all necessary requirements for grant of permit, has no jurisdiction to direct the RTA to grant the permit for the period which had already come to an end. Thus, the impugned order dated 18.1.2007 (Annexure P/6) is quashed and set aside. The respondent No. 4 is at liberty to make a fresh application for grant of temporary permit before the RTA, Bilaspur and the same may be considered in accordance with law by the RTA, Bilaspur.

8. This petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

B/-